

<b>COMPLIANCE BOARD OPINION NO. 99-12</b>
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August 26, 1999

*Mr. Dan Fefferman*  
*Executive Director*  
*International Coalition for Religious Freedom*

The Open Meetings Compliance Board has considered your complaint that the Maryland Task Force to Study the Effects of Cult Activities on Public Senior Higher Education Institutions violated the Act. The Compliance Board understands your complaint to allege that the Task Force itself violated the Act by creating a subcommittee, the Subcommittee on Outside Resources, at a closed session; and that the Subcommittee on Outside Resources has violated the Act by meeting in private.

For the reasons stated below, the Compliance Board finds that the Act was not violated.

## **I**

### **Complaint and Response**

Your complaint asserted that the Subcommittee on Outside Resources “seems to have been created at a meeting of the Task Force which ... did not take place in public. For reasons which should be easily discerned, I am unable to provide dates and places of any of these meetings.” As for the Subcommittee itself, your complaint alleged that it “has apparently already met in private and has done significant public business outside the public eye, having to do with deciding which witnesses will testify.”<sup>1</sup>

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<sup>1</sup> Your complaint also alleged that, in its decision making about witnesses, the Subcommittee had not acted to pursue fairness and balance. This last allegation is beyond the jurisdiction of the Open Meetings Compliance Board. Our jurisdiction is limited to expressing opinions about compliance with the Open Meetings Act, and the Act itself affords members of the public the right to observe, not participate, in the meetings of public bodies. Compliance Board Opinion 97-7 (May 13, 1997), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 277. Decisions about the appropriate witnesses at public hearings are left to the discretion of the Task Force.

In a timely response on behalf of the Task Force, its Chair, William T. Wood, Esquire, denied that the Act was violated. With regard to creation of the Subcommittee on Outside Resources, Mr. Wood indicated that the Subcommittee was formed at his direction, not as a result of Task Force action:

[The Subcommittee] was created by me as Chairman of the Task Force. I appointed its membership. This occurred on May 11, 1999 when I invited Task Force members to assembly at the University of System of Maryland Headquarters in Adelphi, Maryland, for the purpose of meeting each other. No business was transacted, and the gathering being social in nature, did not qualify as a meeting in my view and it was not, therefore, publicized in accordance with the Open Meetings Act. Some interested persons appeared at this gathering, having learned of it and having it assumed that it was a Task Force meeting. At that time, they may have heard the Subcommittee had been created, and it may have “seemed” to have been created at a meeting not open to the public. That is not the case. It was not created at a meeting at all.

With respect to the meeting practices of the Subcommittee, Mr. Wood, pointing to the manner in which the Subcommittee had been created, contended that it was not subject to the Act. Mr. Wood further argued that the Subcommittee has held no meetings governed by the Act. Rather, the two members of the Subcommittee have met at social occasions and have spoken to one another to identify potential witnesses.

## **II**

### **Analysis**

#### ***A. Creation of Subcommittee***

The Open Meetings Act regulates the meeting practices of public bodies. In general, it affords members of the public the right to observe discussion of public business by public bodies. The Act, however, does not address a public body’s allocation of its work or control

a public body's decision whether to discuss a matter in the first place. For example, the Act does not inhibit a public body from conducting business in writing, rather than at a meeting. *See* 81 *Opinions of the Attorney General* \_\_\_\_ (1996) [Opinion No. 96-016 (May 22, 1996)]. Similarly, the Act does not prevent a public body from allocating certain responsibilities to the body's presiding officer, rather than carrying out the responsibilities itself.

The Task Force, like many other public bodies, evidently allows its presiding officer the prerogative of appointing subcommittees. Mr. Wood stated that he alone acted to create the Subcommittee on Outside Resources. The Act does not address individual decision making of this kind and, hence, there was no violation.

### ***B. Meetings of Subcommittee***

Every requirement in the Open Meetings Act is framed in terms of the meeting practices of a "public body." If an entity is not a public body, it is not subject to the Act. In §10-502(h) of the State Government Article, the Act defines "public body" as an entity that consists of at least two individuals and that is created either by any of seven formal legal instruments<sup>2</sup> or, less formally, by appointment of the Governor or the chief executive authority of a political subdivision of the State, if the entity includes in its membership at least two nongovernmental members.

A subcommittee of a public body can itself be a public body if the subcommittee is created by one of the seven formal legal instruments – typically, by resolution or bylaw – or by action of the Governor or local chief executive. A subcommittee that is simply designated by the presiding official of a public body, however, is not a public body. Compliance Board Opinion 94-4 (July 18, 1994), *reprinted in* 1 *Official Opinions of the Maryland Open Meetings Compliance Board* 69.

Based on Mr. Wood's response, we conclude that the latter is the case with regard to the Subcommittee on Outside Resources. Having been appointed by the Chair of the Task Force rather than created by any of the means specified in §10-502(h), the Subcommittee is

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<sup>2</sup> These are: the Maryland Constitution; a State statute; a county charter; an ordinance; a rule, resolution, or bylaw; an executive order of the Governor; or an executive order of the chief executive authority of a political subdivision of the State.

not a public body. It is, therefore, not subject to the Open Meetings Act and may meet privately without violating the Act.<sup>3</sup>

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
Tyler G. Webb

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<sup>3</sup> In view of this conclusion, the Compliance Board need not consider whether the discussions that have been held between the two members of the Subcommittee would otherwise be subject to the Open Meetings Act.